



UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY

CHARGE AGAINST AN AGENCY

FOR FLRA USE ONLY

Case No. 02-09-13-0116

Date Filed 11/23/12

Complete instructions are on the back of this form.

1. Charged Activity or Agency

Name: 325th Fighter Wing  
Address: 501 Illinois Avenue, Suite 1  
Tyndall AFB, FL 32403-5549  
Tel #: (850) 283-2668 Ext.  
Fax#:

2. Charging Party (Labor Organization or Individual)

Name: AFGE Local 1113  
Address: P.O. Box 40116  
Tyndall AFB, FL 32403-0116  
Tel #: (850) 896-2250 Ext.  
Fax#: (850) 283-4744

3. Charged Activity or Agency Contact Information

Name: Chris Smith  
Title: Civilian Personnel Officer  
Address: 445 Suwannee Road, Suite 238  
Tyndall AFB, FL 32403  
Tel #: (850) 283-3203 Ext.  
Fax#:

4. Charging Party Contact Information

Name: David Nash  
Title: Local President  
Address: P.O. Box 40116  
Tyndall AFB, FL 32403-0116  
Tel #: (850) 896-2250 Ext.  
Fax#: (850) 283-4744

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and 1, 4

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

See attached.

7. Have you or anyone else raised this matter in any other procedure? ☒ No ☐ Yes If yes, where? [see reverse] \_\_\_\_\_

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] ☒ Fax ☐ 1st Class Mail ☐ in Person

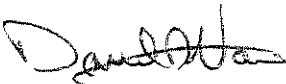
☒ Commercial Delivery ☐ Certified Mail

DAVID D. NASH  
Type or Print Your Name

[Signature]  
Your Signature

11/16/12  
Date

On 8 November 2012, Mrs. Jennifer Hicks was called into Col Paul Skala's (325<sup>th</sup> Medical Group Commander) office. He stated that they were waiting for the first sergeant to arrive. Mrs. Hicks asked what it was in reference to, and Col Skala stated, "I will tell you when the shirt arrives." I told him I asked because I wanted to make sure I did not need a union representative present. Col Skala said, "I don't think you need a representative." When the shirt arrived, Col Skala stated, "This is a letter of reprimand. I want you to look at it and sign it." Mrs. Hicks replied, "Before I read it and sign it, I want to make a call and look at the regulation to make sure I don't need a representative. I am just protecting my rights." Col Skala stated that he wanted me to come back in a half hour. Because of this time period, Mrs. Hicks was not able to get in touch with me, and the first sergeant came and got her from her office and escorted her back to the commander's office where she signed receipt of the proposed reprimand. This reprimand was originally proposed by Mrs. Hicks' new supervisor and Col Skala was designated as the deciding official. Mrs. Hicks had prepared a written rebuttal and was prepared to give an oral presentation, which was outlined as her right, in the proposed reprimand and in accordance with the local negotiated agreement. Mrs. Hicks' rights to representation were clearly violated by Col Skala at this proceeding. I am also attaching the original email sent to me by Mrs. Hicks.



DAVID D. NASH  
President, AFGE Local 1113

## Representation Needed now

From: **Hicks, Jennifer D Civ USAF ACC 325 MDG/SGHC** (Jennifer.Hicks@tyndall.af.mil)  
Sent: Thu 11/08/12 10:53 AM  
To: Nash, David Civ USAF ACC 325 CES/CEFO (david.nash@tyndall.af.mil); david nash (afge1113@live.com)  
Cc: Hicks, Jennifer D Civ USAF ACC 325 MDG/SGHC (Jennifer.Hicks@tyndall.af.mil)

Dave,

Col Skala requested the first shirt to come get me for a meeting. I went to Col Skala's office, he stated, let's wait for the shirt to arrive, I asked what it was in reference to, Col Skala stated, I will tell you when the shirt arrives. I told him I asked because I wanted to make sure I did not need a representative present. Col Skala said, "I don't think you need a representative." When the shirt arrived, Col Skala stated, "this is a letter of reprimand, I want you to take a look at it and sign it." I replied, "before I read and sign it, I want to make a call and look at the regulation to make sure I don't need a representative. I am just protected my rights." Col Skala stated, he want me to come back in a half an hour. Please advise if I am entitled to a representative. I believe that I am, just want to make sure."

*//SIGNED//*

*Jennifer Hicks, RN GS-9*

*Credentials Manager*

*Tyndall AFB, FL*

*COMM:(850) 283-7370 DSN: 523-7370*

*FAX: (850) 283-7508*



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**

South Tower – Suite 1950  
225 Peachtree Street  
Atlanta, GA 30303  
(404) 331-5300 FAX: (404) 331-5280

November 27, 2012

AFLOA/LLFSC  
Attn: Major Jeremiah Crowley  
HQ AFLOA/JACL (LFSC)  
1500 West Perimeter Rd., 1<sup>st</sup> Floor, Suite 1370  
Joint Base Andrews, MD 20762

David Nash, President  
American Federation of Government  
Employees, Local 1113  
P.O. box 40116  
Tyndall AFB, FL 32403-0116

Re: U. S. Department of the Air Force  
325<sup>th</sup> Fighter Wing  
and  
American Federation of Government  
Employees, Local 1113  
Tyndall AFB, Florida  
Case No. AT-CA-13-0116

Dear Major Crowley and Mr. Nash:

I have enclosed a copy of the unfair labor practice charge which the Charging Party filed with my Office. I have assigned the case number shown above to this charge. It is important that you cooperate fully during the investigation of the charge so my office can timely complete the investigation and make a decision. The Agent who has been assigned to investigate the charge will contact you as soon as possible. If you have any questions, please contact the Agent using the phone number or e-mail address at the end of this letter.

**For the Charging Party:**

If you are the party who filed the charge and have not already done so, please submit the following, so my office **receives** it by **December 7, 2012**:

1. A list of witnesses – names, positions, day and evening telephone numbers, and a summary of their expected testimony about their personal knowledge of the charge.

2. Copies of all relevant documents, with an Index if the submission is lengthy.

Section 2423.4(e) of the FLRA's Regulations requires you to provide this evidence/information. If you did not submit any evidence or information when you filed the charge, and do not provide this information by **December 7, 2012**, I may dismiss the charge for lack of cooperation. You are responsible for confirming that my office has received all supporting evidence and information. You also must respond to the Agent's attempts to communicate with you during the investigation.

**For the Charged Party:**

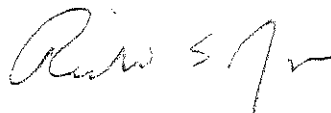
If you are the party against whom this charge is filed, please review the allegations in the charge and submit a written position to my office. You are expected to cooperate fully in the investigation, and the Agent may ask you for documents or a list of witnesses.

**For Both Parties:**

To assist you in understanding how we process an unfair labor practice charge, I have enclosed an information sheet describing what happens during and after an investigation. If someone other than you will be representing your party in this case, please complete the enclosed "Notice of Designation of Representative."

The General Counsel encourages parties to informally resolve unfair labor practice charges, and the assigned Agent is available to assist the parties in resolving this matter. I have enclosed a question and answer sheet that gives information about the General Counsel's dispute resolution services.

Sincerely,



Richard S. Jones  
Regional Director

Assigned Agent: Patricia J. Kush  
404/331-5300 Ext. 5016  
pkush@flra.gov

Enclosed: Notice of Designation of Representative

UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY

NOTICE OF DESIGNATION OF REPRESENTATIVE

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Case No. *AD-CA-13-0116*

TO: Regional Director  
Atlanta Regional Office  
Federal Labor Relations Authority  
South Tower, Suite 1950  
225 Peachtree Street  
Atlanta, GA 30303

I, the undersigned party, hereby designate as my representative in this proceeding, the person whose name and address appears below. Said representative is to be served copies of all formal documents and written communications in this proceeding, excepting subpoenas. This designation shall remain valid until a written revocation is filed by me.

Signature of party (please sign in ink)		Representative's name, address, zip code (print or type)	
Title			
		Area Code	Telephone Number

FLRA Form 75  
Rev. 3-80

*PJK*

# ULP DATA ENTRY (revised February 2011)

325K Tipte  
Wing  
Jynedale

CASE NUMBER: AJ-CA-B-0116 DATE FILED: 11/23/12  
 PROFESSIONAL ASSIGNED: (Code P1) PSK DATE: 11-23-12  
 PROFESSIONAL REASSIGNED: (Code P2) \_\_\_\_\_ DATE: \_\_\_\_\_  
 PROFESSIONAL CO-ASSIGNED: (Code P3) \_\_\_\_\_ DATE: \_\_\_\_\_  
 OPENING LETTER ISSUED: (Code O1) \_\_\_\_\_  
 INITIAL ISSUE CODE: A12.1  
 DISPOSITIVE ISSUE CODE: A12.12

## DESCRIPTION ( AN ENTRY MUST NOW BE MADE IN THIS BLOCK )

- ☐ Exec. Order; Labor Relations forum activities or section 7106(b)(1)  
☒ Raises novel or interesting issue  
☐ Involves potentially sensitive issue  
☐ Concerns an issue of nationwide impact that may cross Regional Office geographic or jurisdictional boundaries  
☒ Injunction requested by Charging Party  
☒ Not Applicable

COMMENTS: (e.g., Related Case Number or any other information region would like to add)

## KEY WORD CODES: (INSERT APPLICABLE CODE NUMBER IN FOLLOWING ACTION TABLE)

Example: Withdrawal Solicitation was After RD Determination; record A2" for Withdrawal Solicitation

### Withdrawal Solicitation

- 1a) Prior to RD determination w/supervisory approval  
 1b) Prior to RD determination w/o supervisory approval  
☒ 2) After RD determination  
 3) Unsolicited withdrawal

### Cooperation (by charged party)

- 1) Full cooperation with affidavits and witnesses  
 2) Agent talked to witnesses - no affidavits  
 3) Submission of documentary evidence  
☒ 4) Submission of statement of position  
 5) Agent talked to charged party representative  
 6) Cooperation not required

### Method

- 1) On-site affidavits and evidence  
☒ 2) Telephone affidavits  
 3) Sworn questionnaire  
 4) Confirming letters  
 5) Unsworn questionnaire  
 6) On-site conversation  
 7) Telephone/E-mail conversation

### Scope

- 1) Dispositive action without the taking of formal evidence  
 2) Dispositive action prior to completion of full investigation  
☒ 3) Dispositive action after full investigation

### Remedy

- 1) Backpay - dollar amount \_\_\_\_\_  
 2) Make whole - dollar amount \_\_\_\_\_  
 3) Status quo ante (bargaining)  
 4) retroactive bargaining  
 5) rescission of action (non-bargaining)  
 6) other traditional remedy - FLRA posting, cease & desist order, prospective order (cases involving formal discussion, Weingarten, dues withholding, (a)(1) statement, prospective bargaining)  
 7) novel remedy (i.e, supervisory training)  
 8) other

### Prosecutorial discretion

- 1) Yes  
☒ 2) No

Full withdrawal dismissal  
 2, 4, 2, 3, 2



UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY  
225 PEACHTREE STREET N.E., SUITE 1950, ATLANTA, GA 30303  
(404) 331-5300 FAX: (404) 331-5280

March 4, 2013

David Nash, President  
AFGE Local 1113  
P.O. Box 40116  
Tyndall AFB, FL 32403

Re: U.S. Department of the Air Force  
325<sup>th</sup> Fighter Wing  
and  
American Federation of Government Employees,  
Local 1113  
Tyndall AFB, Florida  
Case No. AT-CA-13-0116

Dear Mr. Nash:

The FLRA Atlanta Region investigated your charge alleging that the Department of the Air Force, 325<sup>th</sup> Fighter Wing, Tyndall AFB, Florida (the Agency) violated the Federal Service Labor-Management Relations Statute (the Statute) when it denied an employee union representation during a November 8, 2012 meeting. Under Section 7114(a)(2)(B) of the Statute (referred to as an employee's *Weingarten* right) an employee has the right to be represented by the union if: (1) The agency is conducting an examination in connection with an investigation; (2) The employee reasonably believes the examination may result in disciplinary action; and (3) The employee requests union representation.<sup>1</sup> Because the November 8 meeting was not an examination in connection with an investigation, I am not issuing a complaint.

The investigation revealed that on October 30, 2012, Jennifer Hicks submitted a written response to a proposed reprimand she had received a few days before. In the response, she stated that she wanted George White—who is not a Union representative—to represent her in reference to the proposed disciplinary action. Hicks also indicated she wanted all correspondence to be sent to you, the Union President. No one from the Union assisted Hicks in responding to the reprimand.

On November 8, the 325<sup>th</sup> Medical Group Commander, Colonel Paul Skala, met with Hicks. Hicks asked Skala what the meeting was about because she wanted to make sure she didn't need a Union representative. Skala told her he didn't think she needed a representative. Skala handed Hicks a letter of reprimand and asked her to sign it. Hicks told Skala she wanted to notify the Union and find out if she should have a representative before she signed it. Skala

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<sup>1</sup> *Am. Fed'n of Gov't Employees, Local 1941 v. FLRA*, 837 F.2d 495, 498 (D.C. Cir. 1988); *Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan Air Force Base, Cal.*, 29 FLRA 594, 602 (1987).



gave her thirty minutes to find someone. Hicks was unable to connect with a Union representative during that time, and Skala called Hicks back into his office. Hicks read and signed the letter.

In this case, Hicks did not have a *Weingarten* right to Union representation during the November 8 meeting because the Agency was not conducting an examination. Skala was merely delivering a disciplinary decision, and he did not ask Hicks any questions in connection with an investigation.<sup>2</sup> Also, the Agency didn't have any other reason to invite the Union to the meeting since Hicks had designated George White—not the Union—to represent her in reference to the proposed disciplinary action.<sup>3</sup>

If you want to file an appeal of this action you may do so with the General Counsel of the FLRA at the following address:

Federal Labor Relations Authority  
Office of the General Counsel (Attn: Appeals)  
1400 K St., N.W., Second Floor  
Washington, D.C. 20424-0001  
Fax No. 202-482-6608

You have a deadline to file an appeal and must file your appeal no later than **April 3, 2013**. This means that if you mail your appeal, you must postmark it by **April 3, 2013**. If you deliver or fax your appeal you must also do that by the same date. Please send a copy of your appeal to my office here in Atlanta.

If you need more time to prepare your appeal, you may ask for an extension. If you ask for an extension, you must do so in a letter you send so that the office at the above address gets it no later than **March 28, 2013**.

You may also file an appeal, or a request for extension of time to appeal, by e-mail, to [ogc.appeals@flra.gov](mailto:ogc.appeals@flra.gov). Please put the case number in the subject line of your e-mail message.

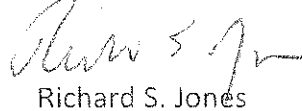
If you want to know how the General Counsel decides whether or not to grant an appeal, please review section 2423.11(e) of the Authority's Regulations on the Authority's web site: [http://www.flra.gov/OGC\\_Appeals](http://www.flra.gov/OGC_Appeals).

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<sup>2</sup> *U.S. Air Force, 2750<sup>th</sup> Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 9 FLRA 871, 872 (1982) (meetings conducted for sole purpose of informing employee of decision already reached and counseling employee were not considered "examinations").

<sup>3</sup> *McGuire Air Force Base*, 28 FLRA 1112 (1997) (agency bypasses union if it delivers disciplinary decision to employee in situation where agency knew employee was being represented by union).

Sincerely,

A handwritten signature in dark ink, appearing to read "Rich S. Jones", written over the printed name.

Richard S. Jones  
Regional Director

Enclosure

cc:

Major Daniel J. Watson  
AFLOA/LLFSC Eglin Region  
210 N. First St. (Bldg 214)  
Eglin AFB, FL 32542-5487

Julia Akins Clark, General Counsel  
Federal Labor Relations Authority  
1400 K Street NW, 2<sup>nd</sup> Floor  
Washington, DC 20424-0001

## ARTICLE 18

### DISCIPLINE

#### Section 1. GENERAL:

a. The procedures criteria outlined in this article shall be observed in any employer action to discipline unit employees. Discipline actions against all employees, including probationary employees, must be based on just cause, be consistent with applicable laws and regulations, and be fair and equitable.

b. For the purposes of this agreement, disciplinary actions are defined as oral admonishments, reprimands, suspensions, and removals for cause.

c. Non-disciplinary counseling sessions conducted by supervisory and/or management officials, with unit employees or entries on AF Form 971 recording such counseling, are not considered to be a form of discipline. However, such entries will be discussed with the affected employees and the employee shall be given an opportunity to rebut, initial, and date the entry to acknowledge receipt of such action. Such counseling sessions and subsequent entries shall be grievable under the terms of this agreement.

#### Section 2. INVESTIGATIONS AND INVESTIGATORY INTERVIEWS:

a. Prior to proposing and/or affecting a disciplinary action against a unit employee, the supervisor shall attempt to ascertain all pertinent facts, both for and against the employee, which shall include discussing the matter with the employee(s) involved to obtain his/her views, if deemed necessary.

b. The employee is entitled, upon request, to have union representation, if the employee reasonably believes that the discussion may result in disciplinary action. If the employee requests such representation, no further questioning will take place until the representative is present.

c. When all the facts have been gathered and disciplinary action appears to be in order, a disciplinary, or a proposed notice, as

applicable, may be issued. If there is a delay in issuing the notice of proposed action, the employee will be advised of the reasons for delay in writing.

**Section 3. NOTICES OF PROPOSED DISCIPLINARY**

**ACTION:** Notices of proposed disciplinary actions will be in writing with the exceptions of oral admonishments and written reprimands. Procedures for issuing oral admonishments and written reprimands are discussed in Section 5 of this Article.

a. Suspension of 14 days or less. These actions normally require a 15-day proposed notice that must include the following:

(1) Specific reasons for the proposed action stated in sufficient detail to preserve the employee's right to reply to the reasons.

(2) The employee's right to reply to the reasons orally as well as in writing to a higher-level official, if there is one, than the official proposing the action within 10 workdays following the date of receipt of the written proposal, and to furnish other documentary evidence in addition to affidavits to support the reply.

(3) The right to be represented by a union representative.

(4) The right to official time in the preparation and presentation of oral and/or written replies if otherwise in a duty status.

(5) The right to review the materials relied on to support the reasons for the proposed action and the location where these materials may be reviewed.

b. Unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, suspensions for more than 14 days, reduction in grade and pay or removals as a result of discipline, will normally require 30 days advance notice which must contain the following:

(1) Specific reasons for the proposed action stated in sufficient detail to preserve the employee's right to reply.

(2) The employee's right to reply to the reasons orally as well as in writing to a higher level official, when there is one, than the official who proposed the action, within 10 workdays following the date of receipt of the proposal, and to furnish other documentary evidence in addition to affidavits to support the reply.

(3) The right to be represented by an attorney or other representative which may be a union representative.

(4) The right to official time in the preparation and presentation of oral and/or written replies if otherwise in a duty status.

(5) The right to review the materials relied on to support the reasons for the proposal and the location where these materials may be reviewed.

Section 4. NOTICES OF FINAL DECISION:

a. A disciplinary action requiring a written proposed notice to the employee will be followed by a final decision notice in writing after the time allowed for the employee to reply. If there is a delay in reaching a decision, the employee will be informed of the reasons for delay in writing.

b. A statement shall be included on all letters of proposed disciplinary actions and decision letters to employees indicating their right to determine whether or not AFGE, Local 1113, will receive a copy of the action letter(s). The following certification shall be attached to the proposed and final decision letter:

"I DO? DO NOT? DESIRE THAT AFGE, LOCAL  
1113 BE FORWARDED A COPY OF THIS ACTION.

EMPLOYEE'S SIGNATURE."

c. In the event an unfavorable final decision is issued, the employee shall be advised of grievance and appeal rights in the notice. An employee may elect to grieve under the negotiated grievance procedure. In addition, suspension of over 14 days, reduction in grade and pay, and removals may be appealed to the Merit System Protection Board (MSPB). The employee must choose to either grieve or appeal but not both. The MSPB address shall be

included in the letter, if appropriate, as well as the name and duty phone of the union president, should the employee choose to seek redress under the negotiated procedures.

**Section 5. ORAL ADMONISHMENTS AND WRITTEN REPRIMANDS:**

a. An oral admonishment is a discussion between the supervisor and the employee concerning an apparent misconduct or delinquency. It is the least formal and least severe of disciplinary actions. Once the supervisor determines that there is an apparent misconduct or delinquency, the supervisor must gather the facts in accordance with Section 2 herein, and privately interview the employee with his/her representative, if appropriate. The employee has the right to express his/her views with respect to the circumstances. If the supervisor determines that the oral admonishment is warranted, the employee is informed with an explanation of why. The supervisor will make a brief pencil entry on the employee's AF Form 971 to document the action and the date of occurrence. The action will remain on the employee's AF Form 971 until it has served its purpose as determined by the supervisor but not to exceed a period of 2 years at which time the action will be erased. The employee shall be given the opportunity to initial and date the entry to acknowledge receipt of the action.

b. Prior to issuing a written reprimand, the supervisor is required to gather available facts, interview the employee in private informing him/her as well as a representative, as appropriate, of the reasons for the interview, and give the employee the opportunity to explain and to express his/her view in accordance with Section 2 of this Article. If the supervisor determines that written reprimand is warranted, the notice must contain:

- (1) The specific reasons for the reprimand;
- (2) The employee's right to review the material relied on to support the reprimand, and where the material may be reviewed;
- (3) That the reprimand will become a part of the employee's Official Personnel Records for a period determined by the supervisor not to exceed 2 years from the date the employee receives

the action, at which time it will be removed and destroyed along with any reference on the AF Form 971.

(4) The statement as required in Section 4 of this Article.

(5) The right to grieve the reprimand under the Negotiated Grievance Procedure, and official time in the preparation and presentation of such grievance.